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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

DEBORAH ANN ETTER,)	Case No. EDCV 13-1540-OP
Plaintiff,)	
v.)	MEMORANDUM OPINION AND
CAROLYN W. COLVIN, Acting)	ORDER
Commissioner of Social Security,)	
Defendant.)	

The Court¹ now rules as follows with respect to the disputed issues listed in the Joint Stipulation ("JS").²

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¹ Pursuant to 28 U.S.C. § 636(c), the parties consented to proceed before the United States Magistrate Judge in the current action. (ECF Nos. 10, 11.)

² As the Court stated in its Case Management Order, the decision in this case is made on the basis of the pleadings, the Administrative Record, and the Joint Stipulation filed by the parties. In accordance with Rule 12(c) of the Federal Rules of Civil Procedure, the Court has determined which party is entitled to judgment under the standards set forth in 42 U.S.C. § 405(g). (ECF No. 8 at 3.)

I.

DISPUTED ISSUES

As reflected in the Joint Stipulation, the disputed issues which Plaintiff raises as the grounds for reversal and/or remand are as follows:

- (1) Whether the Administrative Law Judge (“ALJ”) properly assessed Plaintiff’s mental impairment; and
- (2) Whether the ALJ properly determined that Plaintiff can perform her past relevant work.

(JS at 5.)

II.

STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the Commissioner’s decision to determine whether the Commissioner’s findings are supported by substantial evidence and whether the proper legal standards were applied. DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991). Substantial evidence means “more than a mere scintilla” but less than a preponderance. Richardson v. Perales, 402 U.S. 389, 401, 91 S. Ct. 1420, 28 L. Ed. 2d 842 (1971); Desrosiers v. Sec’y of Health & Human Servs., 846 F.2d 573, 575-76 (9th Cir. 1988). Substantial evidence is “such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at 401 (citation omitted). The Court must review the record as a whole and consider adverse as well as supporting evidence. Green v. Heckler, 803 F.2d 528, 529-30 (9th Cir. 1986). Where evidence is susceptible of more than one rational interpretation, the Commissioner’s decision must be upheld. Gallant v. Heckler, 753 F.2d 1450, 1452 (9th Cir. 1984).

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1 **III.**

2 **DISCUSSION**

3 **A. The ALJ's Findings.**

4 The ALJ found that Plaintiff has the severe impairments of history of
5 "kidney cancer, treated without recurrence; chronic kidney disease, stage II, stable;
6 history of bariatric surgery; hypothyroidism; depressed disorder; histrionic traits
7 and fibromyalgia; migraine headaches; and carpal tunnel syndrome bilaterally."
8 (Administrative Record ("AR") at 16-17.)

9 The ALJ further found that Plaintiff had the residual functional capacity
10 ("RFC") to perform a range of light work with the following limitations: lift
11 and/or carry twenty pounds occasionally and ten pounds frequently; stand and/or
12 walk for six hours out of an eight-hour workday with regular breaks; sit for six
13 hours out of an eight-hour workday with regular breaks; sustain concentration,
14 attention, persistence, and pace in at least two hour blocks of time; frequently
15 kneel, crawl, crouch, and finger; occasionally stoop, climb stairs, and grasp; no
16 climbing ladders, ropes, or scaffolds; no work at unprotected heights or around
17 dangerous machinery; no concentrated exposure to pulmonary irritants such as
18 dust, fumes, gases, and odors; and no work with fast-paced production
19 requirements or assembly line work, such as that involving a conveyor belt. (*Id.* at
20 18.)

21 Relying on the testimony of a vocational expert ("VE"), the ALJ concluded
22 that Plaintiff was capable of performing her past relevant work as a paralegal.
23 (AR at 24-25.)

24 **B. The ALJ's Assessment of Plaintiff's Mental Health Impairment.**

25 Plaintiff contends that the ALJ's assessment of her mental health
26 impairment is not supported by substantial evidence or consistent with the other
27 evidence of record. (JS at 6-8.)

28 A claimant's RFC is what she can still do despite her physical, mental,

1 nonexertional, and other limitations. Mayes v. Massanari, 276 F.3d 453, 460 (9th
 2 Cir. 2001); see also Valentine v. Comm’r, Soc. Sec. Admin., 574 F.3d 685, 689
 3 (9th Cir. 2009) (RFC is “a summary of what the claimant is capable of doing (for
 4 example, how much weight he can lift).”). “At Step Four, claimants have the
 5 burden of showing that they can no longer perform their past relevant work.”
 6 Pinto v. Massanari, 249 F.3d 840, 845 (9th Cir. 2001); Webb v. Barnhart, 433 F.3d
 7 683, 686 (9th Cir. 2005). “Although the burden of proof lies with the claimant at
 8 step four, the ALJ still has a duty to make the requisite factual findings to support
 9 his conclusion.” Pinto, 249 F.3d at 845. Furthermore, though the ALJ’s decision
 10 must be affirmed if it is supported by substantial evidence, meaning more than a
 11 mere scintilla but less than a preponderance, it may not be affirmed where the ALJ
 12 fails to set forth a “meaningful explanation,” allowing the Court to assess the
 13 validity of the ALJ’s reasons for reaching the decision. Robbins v. Soc. Sec.
 14 Admin., 466 F.3d 880, 882, 884-85 (9th Cir. 2006).

15 Here, in determining Plaintiff’s mental RFC, the ALJ took “into
 16 consideration the opinions of the State agency review physicians, the opinions of
 17 the psychiatric consultative examiner, the claimant’s testimony, her behavior at the
 18 hearing, her past medical history, and the psychiatric findings of record,” and that
 19 “the findings adopted herein strike a balance between all of the above.” (AR at
 20 23.) However, the ALJ then proceeded to give “little weight” to both the opinions
 21 of psychiatric consultative examiner Katrine Enrile, M.D., and the Agency mental
 22 review consultants, the only mental health treatment evidence considered by the
 23 ALJ.³ (Id. at 23.) The ALJ explained that she did this because she had given “the
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 26 ³ Although the ALJ claimed to have considered Plaintiff’s past medical
 27 history and the psychiatric findings of record, the ALJ also stated that the medical
 28 evidence dated before the alleged onset date was “not relevant for purposes of this
 decision.” (AR at 21.) Because the ALJ did not explicitly consider any mental

(continued...)

1 benefit of the doubt” and “deferred” to Plaintiff’s subjective complaints in
2 assessing her impairments. (Id.) Yet, earlier in the ALJ’s opinion, she rejected
3 Plaintiff’s subjective complaints to the extent they were inconsistent with the RFC
4 assessed by the ALJ. (Id. at 20-21.) As a result, it appears that the ALJ rejected or
5 gave “little weight” to all the mental health evidence of record and then devised an
6 RFC from unknown evidence. Because it is not clear what evidence was relied on
7 to determine Plaintiff’s mental RFC, the ALJ’s opinion is not substantially
8 supported in this respect.

9 Notably, the ALJ highlighted that Plaintiff did not receive treatment from a
10 mental health specialist during the relevant time period. (Id. at 19, 22.) However,
11 Plaintiff made clear that she did not have mental health insurance coverage and
12 could not afford psychological care. (Id. at 51, 55, 414.) Plaintiff’s lack of mental
13 health treatment should not be held against her under such circumstances. Gamble
14 v. Chater, 68 F.3d 319, 321 (9th Cir. 1995) (“Disability benefits may not be denied
15 because of the claimant’s failure to obtain treatment he cannot obtain for lack of
16 funds.”); Nguyen v. Chater, 100 F.3d 1462, 1465 (9th Cir. 1996) (“it is a
17 questionable practice to chastise one with a mental impairment for the exercise of
18 poor judgment in seeking rehabilitation.”) (citations omitted) (internal quotation
19 marks omitted).

20 Because the ALJ’s assessment of Plaintiff’s mental health impairment, and
21 the corresponding mental RFC assessment, is not supported by substantial
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26 ³(...continued)
27 health records from before the alleged onset date, such as those from Licensed
28 Clinical Social Worker Linda Hardin, the Court assumes the ALJ did not consider
these records in making her RFC assessment.

1 evidence, this action must be remanded for further consideration of the evidence.⁴

2 **C. The ALJ's Consideration of Plaintiff's Past Relevant Work.**

3 Plaintiff also contends the ALJ erred in concluding, based on the mental
4 RFC assessment discussed above, that she could perform her past relevant work as
5 a paralegal. (JS at 15-16.)

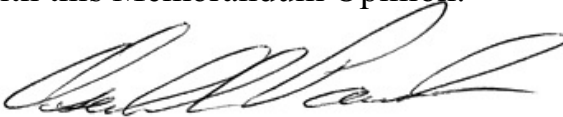
6 Because the Court has concluded that this action must be remanded for
7 further consideration of Plaintiff's mental health impairment and the related
8 mental RFC assessment, the ALJ should conduct a new Step Four and/or Step Five
9 analysis on remand following the review of the mental health evidence.

10 **IV.**

11 **ORDER**

12 Pursuant to sentence four of 42 U.S.C. § 405(g), IT IS HEREBY
13 ORDERED THAT Judgment be entered reversing the decision of the
14 Commissioner of Social Security and remanding this matter for further
15 administrative proceedings consistent with this Memorandum Opinion.

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17 Dated: June 26, 2014

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19 **HONORABLE OSWALD PARADA**
20 United States Magistrate Judge

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22 ⁴ Plaintiff further contends that the ALJ's assessment was insufficient
23 because she improperly rejected Plaintiff's credibility. Because this action must
24 be remanded as discussed above, the ALJ should further consider Plaintiff's
25 credibility. The Court expresses no view on Plaintiff's credibility. However, it
26 notes that the ALJ's conclusion that Plaintiff "exaggerate[d] the circumstances
27 surrounding [her January 2012] hospitalization for secondary gain" is not entirely
28 accurate. While it is true that Plaintiff was ultimately treated for a pain medication
overdose related to an infected tooth, she was initially detained on a "5150" hold,
just as Plaintiff alleged. (AR at 705, 751, 755, 769, 775.)